but there is this lesson for those who read—we see a lawyer in active practice —modestly, fearlessly and unselfishly devoting a large part of his time to active civic duties; accomplishing great things for the benefit of his fellowmen. It is a quiet answer to the statement constantly made that lawyers are a selfish and sordid class. It should be an inspiration to the young attorney to do in his time what the author and lawyers of his stamp did in theirs.

W. H. L.

HANDBOOK OF THE LAW OF PRIVATE CORPORATIONS. By William L. Clark, Jr. Third Edition by I. Maurice Wormser. Pp. xiii, 913. St. Paul: West Publishing Company. 1916.

In certain fields of corporation law momentous developments since the first edition of Clark on Corporations, in 1897, as well as the ordinary growth in the common law, made imperative a revision of the original book, if it was to continue to serve in filling a real need for such a volume. This work has been accomplished by Professor Wormser in a painstaking and authoritative manner. There is ample proof of careful attention to details that might easily have been glossed.

Among sections that have been rewritten to accommodate the text to developments in the law are those dealing with Liability of Promoters to Corporation and Stockholders, and, Power of Corporation to Acquire and Hold Its Own Stock. The statements are put in a succinct, incisive way that makes clarity a characteristic virtue of the revision. The logical method pursued led to the insertion in appropriate places in the text of an examination of: Who Are Promoters—Their Functions, and, What are *Ultra Vires* Acts, before plunging into a consideration of the respective subjects of the liability of promoters and the effect of *ultra vires* acts. There are other notable additions. Not only has the original text been amplified and enriched throughout in the treatment of the subjects comprised in the first edition, but also there have been included new topics, *e. g.*, Power to Consolidate, and, Contracts to Prevent Competition—Trusts—Pools.

The notes have been made more valuable by giving references to articles dealing with particular problems, and been brought to date by including apparently all the cases of importance decided since the first edition, thus adding to the weight and usefulness of the text, while also testifying to its accuracy.

THE LAW OF EMINENT DOMAIN. By Philip Nichols. Second Edition. Pp. Vol. 1, cclii, 720; Vol. 2, xi, 721 to 1577. Albany: Matthew Bender & Company. 1917.

The volumes which lie before us are a second edition of a treatise in one volume published in 1909. The author now professes to cover all phases of the law of eminent domain, whereas the first edition appears to have been confined to a discussion of the constitutional limitations upon the power.

The treatise which we are called upon to review is marred by haste and lack of finish. The author has apparently expended an immense amount of

time and labor in writing the book, and no doubt much useful information is contained within the pages. It seems a pity that so much effort should appear in such slovenly and obscure English, for, in short, Mr. Nichols has failed to meet the test of clear writing.

Mr. Nichols expresses himself throughout in sentences of insufferable length and obscurity. The result is that a large part of the reader's attention is taken up in an effort to find out what the author means to say and what the connection is between different parts of the same sentence. As illustrations of Mr. Nichols' English, the attention of the reader is invited to the first sentence of the preface (on page 3) and to the following excerpt from the text (the italics are the reviewer's):

"Perhaps the subjection of private rights in the streets to uncompensated destruction *in* behalf of public travel made mere joint use seem a trivial injury; *but it is unquestioned that a street railway company owns its rails;* a rival company which enters upon them and puts them to use 'takes' them in the constitutional sense; and such a taking can only be *made* for the public use" (p. 976).

On page 4, he discusses the origin of the power of eminent domain. He says (section 2), "The origin of the power of eminent domain is lost in obscurity, since before the title of the individual property owner as against the state was recognized and protected by law, the right to take land for public use was merged in the general power of the government over all persons and property within its jurisdiction." He appears to mean that the right to condemn was merged in the general power of the government before the title of the property owner was protected by law, and therefore the origin of the power is lost in obscurity. If, however, he is able to say that at an earlier time the power was separate, which is a necessary implication from the statement that it was merged, he cannot, merely from the fact of merger, draw the inference that the origin of the power is lost in obscurity. If there is such obscurity in the origin, it must arise because of some circumstance existing prior to the merger, and not merely because the merger took place at a particular time. The conclusion does not follow from the premise.

On page 11, he says that in England the power of eminent domain was well established by the time of the American Revolution, and the obligation to make compensation had become a necessary incident of the exercise of the power. The word "necessary" may be a slip for the word usual or ordinary. As the phrase stands, however, it is obviously inaccurate—an inaccuracy which is the more surprising as the author himself, on pages 12 and 26, correctly states the principle of constitutional law obtaining in England, *i. e.*, that the legislature has sole power to determine whether the property shall be taken and upon what terms. If the legislature has the power, the obligation to make compensation lies solely in its discretion, and is not a necessary incident to the exercise of the power.

On pages 66 and 67, he says: "The only limitation upon the power to condemn rights over real estate that has been seriously put forward is that a right to be taken by eminent domain must be capable of valuation in money." It appears from the note that what the author is trying to express is, that it has been contended that a right over real estate which cannot be valued in

money may not be taken in eminent domain. The sentence as he has written it leaves it in doubt whether he is speaking of a right in the land-owner to have his property condemned, or whether he is speaking of the condemnation of a right.

On page 69, he says: ". . . the right to vote as he sees fit cannot be taken from a citizen by eminent domain by a legislature seeking to perpetuate its power." It is not the right to vote as he sees fit, but the right to vote at all which is exempt. The rest of the sentence is unquestionably a superfluity. No legislature can condemn the right to vote, whether it is seeking to perpetuate its power or not.

Another example of Mr. Nichols' rather curious way of looking at legal problems is to be found on pages 488 and 489. He is criticising the doctrine that an abutting owner has certain rights in the highway when the fee is in the public. He states the change in the law in favor of the abutting owner substantially as follows:

It is now, however, the law, *etc.*, that the dollar raised by taxation from the people is not as good as a private land-owner's dollar; and while a private owner who buys land and owns it in fee may use it as he sees fit, when the public buys land in fee certain abutting rights immediately attach thereto.

A knowledge of political economy would have shown Mr. Nichols that there is no difference whatever in the purchasing power of a dollar, whether used from the public treasury or the pocket of a private individual. Furthermore, the analogy is imperfect because the public is not buying land as a private individual would buy it, but is acquiring it under eminent domain against the consent of the owner.

On page 507, he asserts, in section 162, that the owner of land abutting on the highway has no constitutional right to compensation for damage caused by change of grade, which statement is not the law in most jurisdictions of this country. It was the law in many jurisdictions.

Another inaccuracy appears on page 525, where the author discusses the reason why steam railroads, which were formerly held to be within the scope of the use of a public highway and therefore exempt from liability to an abutting owner, are now liable in such case. He points out the increased damage caused by the inconvenience of the more extensive operation of the railroads, and then says: "For these and other reasons it was held sooner or later that the abutting owner could recover damages," citing, amongst others, the case of *Jones* v. *Railroad,* 151 Pa. 30. This case decided that the abutting owner's right to recover depended on the provision in the constitution conferring a right to recover for injury caused. It seems an inexcusable inaccuracy or instance of haste to classify under the words "other reasons" constitutional changes of this kind.

On page 972, in discussing the question whether property already subject to a public use may be taken under the power of eminent domain for a different public use, he says that property may be taken for a second public use which a subsequent legislature may deem of greater importance. As a legislative definition of a public use is subject to review by the courts in interpreting the constitutional provisions, this statement is clearly inaccurate.

We have called attention to only a few of the infelicities of expression and inaccuracies of thought and statement which we have noticed. An example of one or the other may be found on nearly every page.

The distinction between the rights of an abutting and a non-abutting owner to recover damages for something done in the highway is of great importance, and there is a considerable amount of law with respect to the position of the non-abutting owner. We have not been able to find any discussion of this subject in the text nor does the word "non-abutting" appear anywhere in the index under any heading to which it is usually referred. It seems, therefore, as if this important topic had been entirely omitted.

We conclude, therefore, that Mr. Nichols has written a book which is no doubt the result of much labor and research, which promises from the general arrangement of the chapters and some of the main subdivisions a reasonably accurate and painstaking analysis of the subject, and which contains many statements of legal doctrine which are well worthy of serious consideration.

Opon closer examination, it appears that there is a certain rather peculiar obscurity of style which makes it very difficult to understand what the author means, and that either from difficulty in using the English language or from lack of care, there are many inaccuracies and misleading statements of the law. Because of these defects, the treatise is an unsafe guide to the novice, and may be used by an expert only with great caution.

Roland R. Foulke.